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TAI CHAI YU

v.

THE CHIEF REGISTRAR OF THE FEDERAL COURT

b

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
SITI NORMA YAAKOB JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: Q-01-9-96]
10 FEBRUARY 1998

c

CONSTITUTIONAL LAW: *Courts - Federal Court - Whether has jurisdiction to reopen and review its own decisions - Whether correctness of a decision can only be questioned in a subsequent case on identical point of law - Rejection of petition by Registrar of Federal Court - Locus standi - Certiorari*

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This was an appeal against the refusal of the learned judge below to grant the appellant (an advocate and solicitor) leave to apply for an order of *certiorari* to quash a decision of the Chief Registrar of the Federal Court ('the respondent'). The respondent had earlier rejected the appellant's client's petition to invoke the original or consultative or inherent jurisdiction of the Federal Court to review a previous decision of the Federal Court made against the appellant's client.

*e***Held:****Per Gopal Sri Ram JCA***f*

[1] The Federal Court has absolutely no jurisdiction to reopen and review its decision in a case. Neither the Federal Constitution nor the Courts of Judicature Act 1964 confers any such jurisdiction upon the Federal Court. A final decision of the Federal Court, once pronounced, is binding upon the parties thereto, and its correctness may only be questioned in a subsequent case where the identical point of law arises for decision. (*Lye Thai Sang & Anor v. Faber Merlin (M) Sdn Bhd & Ors*)

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[2] Furthermore, the appellant was not the person aggrieved by the said decision of the respondent; it was the appellant's client's petition that was rejected. The appellant was a stranger to the complaint and, therefore, lacked the standing to challenge the said decision.

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[3] An application for leave to apply for an order of *certiorari* should not be refused unless it is frivolous. In the present case, the learned judge below was right in concluding that the appellant's client's petition was

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frivolous. Once the respondent was satisfied that there was absolutely no basis upon which the said petition could be received for filing, it was well within his authority to reject the papers which the appellant purported to lodge. a

[Appeal dismissed.] b

[Bahasa Malaysia Translation of Headnotes]

Ini merupakan rayuan terhadap keengganan hakim yang bijaksana di bawah untuk memberikan perayu (seorang peguambela dan peguamcara) kebenaran untuk memohon untuk mendapatkan perintah *certiorari* bagi membatalkan keputusan Ketua Pendaftar Mahkamah Persekutuan ('Responden'). Responden telah pada awalnya menolak petisyen anak guaman Perayu untuk menggunakan bidangkuasa Mahkamah Persekutuan yang asal, konsultatif atau yang sedia ada untuk mengkaji semula satu keputusan yang terdahulu oleh Mahkamah Persekutuan terhadap anak guaman perayu. c
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Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Mahkamah persekutuan secara mutlakanya tidak mempunyai bidangkuasa untuk membuka semula dan mengkaji semula keputusannya dalam sesuatu kes. Perlembagaan Persekutuan mahupun Akta Mahkamah Kehakiman 1964 tidak memberikan sebarang bidangkuasa yang sedemikian ke atas Mahkamah Persekutuan. Keputusan muktamad Mahkamah Persekutuan, sebaik sahaja diumumkan, adalah mengikta pihak-pihak kepadanya, dan ketetapanannya hanya boleh dipersoalkan dalam sesuatu kes yang berikut di mana perkara undang-undang yang serupa berbangkit untuk keputusan (*Lye Thai Sang & Anor v. Faber Merlin (M) Sdn Bhd & Ors*) e
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[2] Lagipun, perayu bukannya orang yang terkilan oleh keputusan responden; adalah petisyen anakguaman perayu yang telah ditolak. Perayu merupakan orang asing dalam tuntutan tersebut dan, dengan itu, ketiadaan pendirian untuk mencabar keputusan tersebut. g

[3] Sesuatu permohonan untuk mendapatkan kebenaran bagi memohon untuk satu perintah *certiorari* tidak seharusnya ditolak kecuali ianya remeh. Dalam kes semasa ini, hakim yang bijaksana di bawah adalah betul dalam memutuskan bahawa petisyen anakguaman adalah amat remeh. Sebaik sahaja responden berpuashati bahawa secara mutlakanya tiada asas di atas mana petisyen tersebut boleh diterima untuk pemfailan, ianya adalah mempunyai kuasa untuk menolak kertas-kertas yang perayu dikatakan hendak menyerahkan. h

[Rayuan ditolak.] i

a Cases referred to:

Lye Thai Sang & Anor v. Faber Merlin (M) Sdn Bhd & Ors [1986] 1 MLJ 166 (foll)
Mohamed Nordin Johan v. Attorney General, Malaysia [1983] 1 MLJ 68 (cit)

[Appeal from High Court, Miri; Originating Motion No: MR 3 of 1995]

b Appellant in person

For the respondent - Ahmad Razif Mohd Sidek FC

Reported by Alex KC Lee

JUDGMENT

c Gopal Sri Ram JCA:

This appeal concerns a short point well covered by authority. The facts of the case have been so admirably summed up in the judgment of Abdul Kadir Sulaiman J, that we find their regurgitation unnecessary. Suffice to say that in this case the learned judge refused the appellant leave to apply for an order of *certiorari* against the registrar of the Federal Court. The subject matter of the challenge was the decision of the respondent rejecting the petition filed by the appellant, a solicitor, purportedly invoking the original or consultative or inherent jurisdiction of the Federal Court for the purpose of reviewing a decision of that Court earlier given against the appellant's client.

Now, it is trite law that the Federal Court has no jurisdiction of any sort to re-open and review its decision in a case. Neither the Federal Constitution nor the Courts of Judicature Act 1964 confers any such jurisdiction upon the Federal Court. A final decision of the Federal Court, once pronounced, is binding upon the parties thereto and its correctness may only be questioned in a subsequent case where the identical point of law arises for decision. These propositions were established by the decision of the Supreme Court in *Lye Thai Sang & Anor v. Faber Merlin (M) Sdn. Bhd. & Ors.* [1986] 1 MLJ 166. A similar attempt by the respondent to the appeal in that case met with failure. Abdul Hamid CJ (Malaya) (as his Lordship then was) said (at p. 168):

Where, therefore, a final decision has been delivered, an appeal is in effect heard and disposed of. In other words, it is brought to a final conclusion. And that being the case, the Supreme Court has no power to re-open, re-hear and re-examine its decision for whatever purpose.

h In our judgment, the Federal Court is in like position.

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Furthermore, the appellant is not the person aggrieved by the decision of the registrar of the Federal Court. It was his client's petition that the respondent rejected. The appellant is a stranger to the complaint and therefore lacks standing to challenge the decision in question.

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It is settled law that leave to apply for an order for *certiorari* should not be refused unless the application is frivolous. See, *Mohamed Nordin bin Johan v. Attorney General, Malaysia* [1983] 1 MLJ 68. In the present instance the learned judge concluded that the appellant ought not to have leave because the application was frivolous. He was entirely correct in concluding thus. Once the registrar was satisfied that there was absolutely no basis upon which the petition could be received for filing it was well within his authority to reject the papers which the appellant purported to lodge.

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Having considered the matter most carefully we found ourselves in agreement with the learned judge. Accordingly we dismissed the appeal but made no order as to costs. The deposit lodged in court was ordered to be refunded to the appellant.

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